

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the California Public Utilities)	CC Docket No. 99-200
Commission for Delegated Authority to)	
Implement Specialized Transitional Overlays)	

**UNITED ONLINE’S REPLY COMMENTS IN SUPPORT OF THE PETITIONS FOR
RECONSIDERATION OF THE COMMISSION’S SEPTEMBER 9, 2005 ORDER
PERMITTING CALIFORNIA TO IMPLEMENT SPECIALIZED OVERLAYS**

Pursuant to the Public Notice issued in the above-captioned proceeding,¹ United Online, Inc. (“United Online”) submits these reply comments in support of the petitions for reconsideration of the *California Specialized Overlay Delegation Order* (“*Delegation Order*”)² filed by Pac-West Telecomm, Inc. and the California Cable and Telecommunications Association.³ The *Delegation Order* allows the California Public Utilities Commission (“CPUC”) to distribute telephone numbers on the basis of the service provided or the type of technology used to provide the service. The CPUC’s proposed technology-specific overlays would disrupt rating and routing practices causing consumer confusion, are inconsistent with federal law, violate Commission policy, and would impede the delivery of Enhanced 911 (“E911”) services to those that receive

¹ See Petitions for Reconsideration of Action in Rulemaking Proceeding, FCC Report No. 2747, 71 Fed. Reg. 2042 (Jan. 12, 2006).

² *Petition of the California Public Utilities Commission for Delegate Authority to Implement Specialized Transitional Overlays*, Order, CC Docket 99-200, FCC 05-2439 (rel. Sept. 9, 2005).

³ See *Petition of the California Cable and Telecommunications Association for Reconsideration*, CC Docket No. 99-200 (filed Oct. 11, 2005); *Petition of Pac-West Telecomm, Inc. for Reconsideration*, CC Docket No. 99-200 (filed Oct. 11, 2005).

telephone numbers from the overlay area codes. United Online strongly recommends that the Commission reconsider and withdraw its delegation of authority to the CPUC.

United Online provides consumer Internet subscription services, including dialup Internet access, premium e-mail, personal web hosting and community-based networking, through brands such as NetZero, Juno and Classmates. United Online currently offers three Voice over Internet Protocol (“VoIP”) service products under its NetZero brand: (1) a peer-to-peer VoIP service; (2) an outbound-only service that only allows for the termination of traffic on the PSTN; and (3) a product that allows for both inbound and outbound calling, including termination of traffic over the PSTN. The CPUC identified both dialup Internet access and VoIP services as subject to the technology-specific overlays.⁴

I. THE PROPOSED OVERLAYS WOULD DISRUPT CALL RATING AND ROUTING AND CAUSE CONSUMER CONFUSION

The majority of United Online’s consumers access the Company’s online services through dialup Internet access telephone numbers. Maintaining local access to United Online’s Internet services is essential to the Company and its users. The CPUC’s proposed technology-specific overlays would wreak havoc on the routing and rating of telephone calls. By establishing two overlay codes: one for Northern California and the other for Southern, the CPUC would collapse numerous area codes and 738 rate centers into two. The CPUC has not explained how local calling areas will be maintained should it implement such overlays nor does it describe how customers will be able to determine whether a particular call is local or long distance.⁵ Call

⁴ See *Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Specialized Overlay Area Codes, CC Docket Nos. 99-200 & CC Docket No. 96-98, at 2-3 (filed Oct. 6, 2003) (“*Petition*”).

⁵ See, e.g., *Verizon Comments*, at 5.

rating and routing is too important an issue to be left to the vagaries of an uncertain process and an ambiguous *Petition*. Until such time as the CPUC determines how existing calling areas will be maintained and how consumers will determine whether calls made between existing area codes and the technology-specific overlay area codes are local, the Commission should withdraw its *Delegation Order*.

II. THE FCC SHOULD WITHDRAW THE *DELEGATION ORDER* BECAUSE THE CPUC HAS NOT CLEARLY DEFINED THE SERVICES SUBJECT TO THE TECHNOLOGY-SPECIFIC OVERLAYS AND THE OVERLAYS WILL CAUSE CUSTOMER CONFUSION AS TO WHETHER A CALL IS A TOLL CALL

United Online's VoIP services are used by many customers as a natural extension of the Company's existing Internet services such as email and instant messaging. United Online's dialup customer can make use of the VoIP services using their existing circuit-switched access line. The Company's customers can choose from a number of VoIP services including one where customers are assigned a telephone number so that they can both place calls to, and receive calls from, the PSTN. While the *Petition* makes clear that VoIP services are subject to the overlays, the CPUC does not provide a definition of "VoIP."⁶ Without a definition of VoIP, the CPUC could interpret the *Delegation Order* to allow it to require United Online's customers that access VoIP services using dialup Internet access lines to obtain telephone numbers from the proposed technology-specific overlays. It simply makes no sense for consumers that access online service through traditional circuit-switched access lines to be segregated into area codes drawn from technology-specific overlays because they happen to use a VoIP application while they are online. The *Petition* leaves unanswered the question of what happens to United Online customers that access the Company's Internet services through conventional access lines but make use of the two-way VoIP service. If such a customer moves, will they be prevented from porting their

⁶ See generally *Petition*.

existing telephone number because they intend to continue to make use of the online VoIP service? United Online submits that the Commission should withdraw the authority delegated to the CPUC because the CPUC has not sufficiently defined the VoIP services subject to the overlays.

The proposed technology-specific overlays will also cause consumer confusion for VoIP customers. In limiting telephone number assignment to VoIP providers from technology-specific overlays, United Online's VoIP customers would receive a telephone number from a non-conventional area code. When United Online's customers provide their telephone numbers to customers, business associates, family and friends, the CPUC has not explained how callers will know whether the call placed is a local or long distance call. With two overlays that encompass the entire state, it is entirely unclear how consumers would be able to determine whether a particular call to an overlay area code would be a toll call. Today, most consumers understand that when an overlay is implemented, calls between the overlays are local even though a neighbor may have a different area code. With the CPUC's proposal, one overlay will include numerous area codes. Thus, the area code will not provide enough information to determine whether the call will be local or long distance. The CPUC's proposal lacks a description of how consumers would determine whether a call is local and long distance and it is unclear to United Online what type of system would be put in place in order to make it a relative simple task to determine whether a call would result in toll charges or not. The Commission should withdraw the CPUC's delegated authority due to the consumer confusion that would abound about the rating of a particular telephone call.

III. THE PROPOSED OVERLAYS VIOLATE FEDERAL LAW

While there is ample justification for the Commission to withdraw the *Delegation Order* due to the lack of detail contained in the CPUC's *Petition*, the Commission should also rescind

the authority granted because it violates federal law. In passing the Telecommunications Act of 1996 (“1996 Act”), Congress made clear that telephone numbers were to be made available “on an equitable basis.”⁷ But the technology-specific overlays described in the *Petition* do not satisfy the requirements of Section 251(e). Providers of VoIP services would be excluded from existing area codes and required to obtain telephone numbers from the overlays. Moreover, as detailed in Section II, *supra*, users of dialup Internet access services may have to be prepared to surrender their existing telephone numbers should they ever choose to move and make continued use of a VoIP service *via* a traditional circuit-switched access line. This is not equitable access to telephone numbers as set out in Section 251(e) of the Act.

Providers of new technologies and services face significant hurdles in acquiring new customers. Segregating users of new services to a different area code would place one more obstacle in the path of consumers and service providers of such technologies and services. The CPUC’s proposal for implementing technology-specific overlays fails to meet the requirements of Section 251(e) as providers of traditional wireline and wireless services will have continued access to telephone numbers from existing areas codes while providers of VoIP services will be limited to drawing telephone numbers from the technology-specific overlays. Accordingly, the Commission should withdraw the *Delegation Order* as it violates Section 251(e) of the 1996 Act.

The CPUC proposal also violates the 1996 Act in that it would frustrate number portability. By statute and pursuant to the Commission’s rules, carriers must allow customers to switch to the service provider of their choice and maintain their telephone number.⁸ The policy that

⁷ 47 U.S.C. § 251(e)(1).

⁸ See 47 U.S.C. § 251(b)(providing that number portability imposes “the duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.”). See also 47 C.F.R. § 52.21 *et seq.*

informs number portability is clear; the Commission has highlighted that the absence of number portability “likely would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. Business customers, in particular, may be reluctant to incur the administrative, marketing, marketing, and good will costs associated with changing telephone numbers.”⁹

Despite the statute, rules and Commission policy, the proposed technology-specific overlays would impede number portability. Providers of VoIP services would only have numbers from the overlay area codes available for assignment. Should a customer choose to transfer their service to a traditional provider or wireline service or a wireless provider, either the number will not be ported or, if ported, the CPUC purpose for implementing the overlays will be thwarted. Similarly, if customers of traditional wireline or wireless services would like to migrate to VoIP services, they will either be unable to transfer their number or they will be able to port their telephone number undermining the proposed overlays. The Commission should withdraw its delegation of authority to the CPUC as it either violates Section 251(b) of the Act or the overlays as conceived will not be limited to a limited set of services and technologies.

IV. THE CPUC FAILED TO MEET THE COMMISSION’S CRITERIA FOR IMPLEMENTING TECHNOLOGY-SPECIFIC OVERLAYS

The *Petition* also fails to meet the Commission’s established policy for granting delegated authority to implement technology-specific overlays. In the *Third NRO*,¹⁰ the Commission set out the criteria that state commissions would have to meet in order to receive delegated authority to implement specialized overlays. Among other prerequisites, the Commission deter-

⁹ *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8368 (1996).

¹⁰ *Numbering Resource Optimization*, CC Docket No. 99-200, Third Report and Order and Second Report on Reconsideration, FCC 01-362 (rel. Dec. 28, 2001) (“*Third NRO*”).

mined that specialized overlays must reduce demand for numbering resources in the underlying area codes.¹¹ But the *Petition* is completely devoid of analysis concerning this criterion because, as the CPUC concedes, carriers do not track how access lines are used.¹² In the absence of such data, the CPUC cannot determine how much relief to underlying area codes will be realized by implementing the technology-specific overlays. Thus, the *Petition* fails to make the requisite showing and the Commission should rescind the *Delegation Order* on this basis.

Additionally, the Commission found that states wishing to implement specialized overlays must also demonstrate that the numbering resource optimization benefits of a specialized overlay are greater than those that would be realized from an all-services overlay.¹³ The *Petition* does not include such analysis. Again, the CPUC is unable to meet this condition because there is no information available as to how end users make use of their access lines. Without such data, the CPUC cannot forecast demand for numbering resources in the specialized overlays let alone compare such a forecast to what would occur if an all-service overlay were implemented instead. Thus, the Commission should withdraw the authority granted in the *Delegation Order* until the CPUC is able to gather the necessary data, engage in the required analysis, and the industry has an opportunity to comment on the results.

V. THE CPUC'S PROPOSED OVERLAYS WILL DISRUPT THE DELIVERY OF 911 CALLS

Another important deficiency in the CPUC's proposed overlays is that there is no plan or discussion as to how the delivery of emergency services will occur if the overlays are imple-

¹¹ See *id.* at 82 (“To provide any meaningful benefits, a [Specialized Overlay] should divert significant demand from the underlying area code to extend the life of the area code.”).

¹² See *CPUC Petition*, at 3 (“Carriers assert that they would need to individually survey their customers to determine the extent of usage and identify the individual numbers assigned to specialized overlay type services.”).

¹³ See *Third NRO.*, at 81.

mented. Enhanced 911 (“E911”) systems “route 911 calls through the use of a Selective Router to a geographically appropriate PSAP based on the caller’s location.”¹⁴ But, unlike normal phone calls, 911 calls are routed based on the caller’s telephone number and not the called number.¹⁵ The Selective Router data base and “associated logic maps the telephone numbers served by its subtending End Offices to the proper PSAP.”¹⁶ The Master Street Address Guide links the street address associated with a telephone number to a particular Public Safety Answering Point.¹⁷ The CPUC proposal is devoid of any detail as to what will need to occur to allow the public that receives numbering resources from the overlay area codes to continue to receive E911 services. The Commission should withdraw its delegation of authority to the CPUC because the proposed overlays will disrupt the delivery of E911 services to California residents that receive numbers from the overlay area codes.

¹⁴ *IP-Enabled Services – E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, at ¶ 13 (rel. June 3, 2005).

¹⁵ *See* Dale N. Hatfield, *A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services (Hatfield Report)*, at 5.

¹⁶ *Id.*

¹⁷ *See id.*

VI. CONCLUSION

United Online urges the Commission to grant the petitions for reconsideration filed by Pac-West and CCTA and rescind the *Delegation Order*. If implemented, the CPUC's proposed overlays would upset existing call rating and routing practices causing significant consumer confusion. Additionally, the CPUC has failed to sufficiently define the services that will be subject to the overlays. Moreover, the CPUC's proposed overlays violate federal law and are inconsistent with Commission policy. Importantly, the Commission's proposed overlays threaten to disrupt the delivery of E911 services to those customers that receive overlay area codes. Accordingly, United Online submits that the Commission must withdraw the authority it granted to the CPUC in the *Delegation Order*.

Respectfully submitted,

/s/
Russell M. Blau
Ronald W. Del Sesto, Jr.
SWIDLER BERLIN LLP
3000 K Street, N.W.
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7647

Counsel to United Online, Inc.

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I, Linda Crelling, do hereby certify that on this 6th day of February, 2006, I caused to be served a true and correct copy of the foregoing Reply Comments of United Online, Inc. by electronic filing or U.S. mail to the following:

+Marlene H. Dortch Office of the Secretary Federal Communications Commission The Portals, 445 12 th Street, S.W. Room TW-A325 Washington, D.C. 20554	Randolph L. Wu Sindy J. Yun 505 Van Ness Ave. San Francisco, CA 94102
+Best Copy and Printing, Inc. The Portals, 445 12 th Street, S.W. Room TW-A325 Washington, D.C. 20554	Jerome Fitch Candelaria California Cable & Telecommunications Association 360 22 nd Street, Suite 750 Oakland, CA 94612
+Richard M. Rindler Counsel for Pac-West Swidler Berlin LLP 3000 K Street, NW Washington, DC 20007	Karen Zacharia Amy P. Rosenthal Verizon 1515 North Courthouse Road Suite 500 Arlington, VA 22201-2909
Luisa L. Lancetti Charles W. Mckee Sott R. Freiermuth Sprint Nextel Corporation 401 9 th Street, NW Suite 400 Washington, DC 20004	Philip L. Verveer Karen Henein Counsel for j2 Global Communications, Inc. Willkie Farr & Gallagher LLP 1875 K Street, NW Washington, DC 20006

/s/ Linda Crelling
Linda Crelling